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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/039,837

10/18/2001

Robert J. Greenberg

S100-DIV2

1149

28284 7590 07/27/2007
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EXAMINER

OROPEZA, FRANCES P

ART UNIT

PAPER NUMBER

3766

MAIL DATE

DELIVERY MODE

07/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/039,837

Applicant(s)

GREENBERG ET AL.

Examiner

Frances P. Oropeza

Art Unit

3766

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 269-300 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 269-300 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Request for Continued Examination

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. The Applicant's submission filed on 5/9/07 has been entered.
2. The Applicant amended independent claims 269, 278, 287 and 297, hence the rejection of record is withdrawn and a new rejection established in the subsequent paragraphs.

Claim Rejections - 35 USC § 102

3. Claims 269-271, 276, 278-280, 285, 287-290, 295 and 297-299 are rejected under 35 U.S.C. 102(e) as being anticipated by Eckmiller (US 6400989). Edkmiller discloses a visual prosthetic comprising an encoder (read as including the video receiver, video procession unit, and external communications unit), an implanted carrier (read as the internal communication unit) and implanted micro-contacts located in the retina (read as the plurality of electrodes) (figure 2; col. 3 @ 49-59; col. 3 @ 66 – col. 4 @ 10; col. 8 @ 54-61).

As to claims 270, 271, 279, 280, 289 and 290, the operational data includes electrode current (col. 5 @ 60-64).

As to claims 276, 285, 295 and 299, electrical recordings from the retina are communicated (col. 3 @ 49-50; col. 4 @ 18-26; col. 7 @ 23-32; col. 11 @ 23-35).

As to a means for altering parameters based on operational parameters, the monitoring system of the encoder is read to alter parameters for stimulation of visual neurons based on operational data (col. 7 @ 22-47).

Claim Rejections - 35 USC § 103

4. Claims 272-275, 277, 281-284, 286, 291-294, 296 and 300 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eckmiller (US 6400989) in view of Michelson (US 4628933). As discussed in paragraph 3 of this action, Eckmiller discloses the claimed invention except for the operational data including:

electrode impedance (claims 272, 281 and 291),
electrode voltage (claims 273, 274, 282, 283, 292 and 293),
an indication that a compliance voltage has been reached (claims 275, 284 and 294), and
an indication of power level (claims 277, 286, 296 and 300).

Michelson teaches the composition of an ideal visual neuron stimulating signal comprises electrode impedance, electrode voltage, an indication that a compliance voltage has been reached (read as threshold), and an indication of power level, these elements included for the purpose of taking into account the physiological and/ or operating factors (impedance, voltage and power) to provide comprehensive feedback that enables creation of an optimum visual stimulation signal. It would have been obvious to one having ordinary skill in the art at the time of the invention to have used electrode impedance, electrode voltage, an indication that a compliance voltage has been reached, and an indication of power level in the Eckmiller system in order to provide effective bi-

directional communication signals that enable induction of visual perception in individuals where the optical pathway of the eye and the neural response of the retina are intact (col. 2 @ 21-24; col. 3 @ 65 – col. 4 @ 17; col. 4 @ 18-33; col. 4 @ 52-65; col. 5 @ 31-34).

Drawings

5. Figures 4 and 5 stand objected to under 37 CFR 1.83(a) because the rectangular boxes are not labeled as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Declaration

6. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because the Robert J. Greenberg signature is not dated.

Statutory Basis

7. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fran Oropeza whose telephone number is (571) 272-4953. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on (571) 272-4955. The fax phone numbers for the organization where this application or proceeding is assigned is (571) 273-8300 for regular communication and for After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frances P. Oropeza
Patent Examiner
Art Unit 3766

FO
7-22-07

Angela D. Sykes

ANGELA D. SYKES
SUPERVISORY PATENT EXAMINER
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